IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2517 of 2002
To
FIRST APPEAL No. 2524 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
SHAIKH ABDULMIYA ISMAIL - Defendant(s)

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Appearance :
MR UDAY R BHATT A.G.P. for Appellant(s) : 1,
RULE UNSERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/01/2007

ORAL COMMON JUDGMENT

1. This group of First Appeals arises from the common judgment and award made by the 4th Joint Civil Judge [S.D.], Mehsana dated 30th October, 2001 in Land Reference Cases No. 177/1998 to 180/1998 and 182/1998 to

185/1998. The appeals have been filed by the Special Land Acquisition Officer, Dharoi Canal Scheme, Himmatnagar.

2. The lands of the respondents at the relevant were agricultural lands. They are situated in the sim of village Transvad in Kheralu Taluka of Mehsana District. They were needed for implementation of the Dharoi Canal Scheme. Hence, process to acquire them under the provisions of Land Acquisition Act, 1894 [hereinafter referred to as the "Act"] was initiated. Notification under Section 4 of the Act was issued on 25th June, 1992. It was followed by declaration under Section 6 of the Act, which was published on 31st December, 1992. The appellant after complying with all the necessary formalities declared the award dated 31st July, 1993 whereby he granted compensation of Rs.2.40 paise per sq. mtr. Being aggrieved by the award, the respondents made an application under Section 18 of the Act to the Collector for making references to the Civil Court for enhancement of the compensation. Accordingly reference was made and aforesaid reference cases were filed.

3. It was the say of the respondents that the compensation awarded by the appellant was hopelessly inadequate and it was required to be enhanced. According

to them, the lands were fertile lands and they obtained various crops, three times in the year. It was also averred that village Transvad had many facilities and it was closely connected with important centre like Unjha. According to them the village had facilities of hospitals, schools, telephone, Milk Producers' Society, Co-operative Society etc. Hence, the market value determined by the appellant was on the lower side. They claimed Rs.20=00 per sq. mtr. The appellant filed written statement at Exh. 4. According to him, the market value was properly determined and there was no need to enhance the compensation.

4. Before the Reference Court, the parties led evidence, oral as well as documentary. The respondents examined Shri Bhudarbhai Kalidas Patel at Exh. 9 on behalf of the original claimants. He is the applicant of Reference case no. 183/1998. He stated in his evidence that he had seen the lands under acquisition of all the claimants and, therefore, he was giving evidence on behalf of them. According to him, award of Rs.2.40 paise per sq. mtr., granted by the appellant was very less and it did not reflect the correct market value of the land in question. According to him, the appellant ought to have awarded a sum of Rs.20=00 per sq. mtr. He has stated

that village Transvad was having many facilities. According to him, the village had tar road and it was connected with the main road. He further stated that village Transvad and village Sabaliya were adjacent to each other. According to him, the village had various facilities like Milk Producers' Society, Co-operative Society, hospitals, schools, telephone etc. He has stated that the agricultural produce were sold at A.P.M.C. Unjha. He has stated that there were irrigation facilities and they obtained crops in three seasons during the year. He has been cross-examined by the other side. However, nothing important from the point of view of the appellant has been elicited from this witness. Apart from the oral evidence, the respondents also produced documentary evidence including the earlier awards made by the Court in respect of the lands situated in the vicinity of the land in question.

5. During the course of arguments before the Civil Court, the learned advocate appearing for the respondents placed reliance on the award at Exh. 10, which was in respect of the lands situated at village Sabaliya. Village Sabaliya is very near to village Transvad. In the case of village Sabaliya compensation of Rs.18=00 per sq. mtr., was awarded. The respondents, therefore, contended

that on the same line award could be made in their cases also.

6. It may be noted here that so far as the lands situated at village Sabaliya are concerned, they have been acquired for the very purpose i.e., for Dharoi Canal Project and the notification was published on 18th April, 1991 i.e., about a year and two months prior to the notification under Section 4 of the of the Act in the present case. As stated above, the boundaries of village Sabaliya and Transvad are adjoining to each other, as per the deposition of Shri Bhudarbhai Kalidas Patel. Award at Exh. 10 in respect of the lands of village Sabaliya show that the market value was determined at Rs.18=00 per sq. mtr., by the Reference Court. Exh. 10 is the award made by Civil Judge [S.D.], Mehsana in Land Reference Case No. 177/1998. In the said case the Court awarded Rs.17.40 paise per sq. mtr., as additional compensation. Over and above Rs.2.40 per sq. mtr., awarded by appellant no. 1. Thus, in all Rs.19.80 per sq. mtr., was awarded by the Reference Court. Relying upon the said award, in the instant case also, the Reference Court has awarded additional sum of Rs.17.40 paise per sq. mtr. It may be noted here that for this very purpose, some more lands of village Sabaliya were acquired for which ultimately Land

Reference Case Nos. 3241/1993 to 3259/1993 were filed before the learned Assistant Judge, Mehsana. In those cases, the learned Judge awarded in all Rs.18=00 per sq. mtr., by way of compensation. Against the said award, the State of Gujarat approached this Court by filing First Appeals No. 2778 of 2000 and its allied matters. This Court, by judgment dated 23rd November, 2006 dismissed the appeals and confirmed the award of the Reference Court. In the instant case the acquisition is one year and two months later. Hence, in my opinion, the award made by the Reference Court is just and proper and requires no interference by this Court. These appeals therefore, have, no merit and they are dismissed.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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